

R430-6. BACKGROUND SCREENING.

R430-6-3. Submission of Background Screening Information Associated with a New or Renewal Application.

- (1) Each applicant requesting a new or renewal child care license or residential certificate must submit to the Department the name and other required identifying information on all covered individuals.
 - (a) Unless an exception is granted under Subsection (4) below, the applicant shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.
 - (b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

Rationale / Explanation

The purpose of this rule is to ensure that individuals who do not pass a background screening do not work with or have unsupervised access to children in child care programs regulated by the Bureau of Child Care Licensing, as outlined in Utah Code 26-39-107.

Enforcement

This rule is specifically for background clearances required for new and renewal applications. Because licenses and certificate are issued to a specific location, and are not transferrable to any new location, when a child care program (center or in-home) changes locations, their application is treated as a new application, which requires new background clearance forms for all covered individuals who will work or reside at the new location.

CHILD CARE CENTERS

For child care centers, individuals who must submit background clearance documents ("covered individuals") include:

1. **Owners & Members of the Governing Body.**
 - Owners mean anyone who has a 25% or greater share in the business, or anyone with less than a 25% share if they are in the center anytime during hours of operation. If a center's legal structure is a corporation, a state or local government, or a private non-profit agency, and the organization operates other programs in addition to the child care program (for example, a ski resort, a recreation center, or a domestic violence shelter), the owners and members of the governing board include any owners and board members who perform one or more of the functions listed below.
 - A. They have unsupervised access to the children in care at the center, or are present in the center during hours of operation.
 - B. They make decisions regarding the day-to-day operations of the center.
 - C. They hire and fire child care staff.
 - D. The child care staff report to them and/or they conduct personnel evaluations of the child care staff.
 - E. They are involved in writing the center's policies and procedures.
2. **Directors.** *This means the person who is the director, director designee, and/or assistant director of the center.*
3. **Employees.** *This includes anyone employed to work in the child care center. For child care centers located in buildings that also house other activities (for example, a city or county recreation center, a*

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community center, a church, or a school), non-child care staff (staff who do not have any duties working with child care children), are not required to submit background clearances, provided that the center first submits a written policy explaining how they ensure that non-child care staff do not have unsupervised access to child care children, including when child care children are in the bathroom.

If a person is on leave, for example, maternity leave, but the center still considers them an employee, they should be included on the renewal background screening forms. If a person quits and then returns to work, or is on leave and the center does **not** still consider them an employee, they will need to submit a new initial CBS/MIS Form when they return from leave.

4. **Providers of care.** This means anyone who provides direct care to one or more child in the center.
5. **Volunteers, except parents of children enrolled.** This includes any volunteer who works with the children or is present in the child care facility when care is being provided to children. If a parent volunteer at a program receives compensation (either monetary, or free child care) for volunteering in the center, they are considered an employee under #3 above. A parent of an enrolled child who has not passed a background screening may not have unsupervised access to any child in care except their own child.

Volunteers include students completing a practicum for a high school or college course that involves working in a regulated child care facility, unless the requirement is that the student observe the children only, and not interact with them. If the student only observes the children and does not interact with them, they do not need to pass a background screening. If a student is being paid to complete a practicum, they are considered an employee under #4 above.

6. **Anyone who has unsupervised contact to a child in care.**

HOME CHILD CARE PROVIDERS

For licensed family and residential certificate providers, individuals who must submit background clearance documents ("covered individuals") include:

1. **All individuals age 12 and older who reside in the home.** A person is considered to "reside" in the home if they stay continuously in the home for 2 weeks or longer. This includes individuals who rent space or an apartment in the provider's home.
2. **Providers of care.** This means anyone who provides direct care to one or more child in care.
3. **Employees.** This includes anyone employed to work in the child care program, including substitutes.
4. **Volunteers, except parents of children enrolled.** This includes any volunteer who works with the children. A parent of an enrolled child who has not passed a background screening may not have unsupervised access to any child in care except their own child.
5. **Anyone who has unsupervised contact to a child in care.**

If providers rent out a part(s) of their house, everyone living in the house, including renters, is required to have a background screening, unless all of the following conditions are met:

- A. If the rented portion of the house has a separate outside entrance, and there is no interior doorway

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- (inside the home) between the rented portion and the rest of the home.
- B. If there is a signed rental/lease agreement between the provider and the renter.
 - C. If the rented portion of the home has a separate mailing address and mailbox from the rest of the home.
 - D. If there is no potential for the renters to have unsupervised access to the children in care, including when the children are playing outdoors. In order to meet this criteria, the children in care would need to play in a fenced-in play area that the renters are not allowed to access or use, and no child in care (including school age children) could play outdoors without the provider also being outdoors.

If all of these conditions are met, the renters do not need to have a background screening. Otherwise, they need one.

If a provider rents an apartment in a home, and is not the home owner, the individuals living in the portion of the home the provider does not rent do not need a background screening if all of the following conditions are met:

- A. If there is a signed rental/lease agreement between the home owner and the provider who rents the apartment.
- B. If the rented portion of the home has a separate mailing address and mailbox from the rest of the home.
- C. If there is no potential for the home owners not living in the rented portion of the home to have unsupervised access to the children in care, including when the children are playing outdoors. In order to meet this criteria, the children in care would need to play in a fenced-in play area that the home owners do not access or use, and no child in care (including school age children) could play outdoors without the provider also being outdoors.

If all of these conditions are met, the renters do not need to have a background screening. Otherwise, they need one.

COMPLETING AND SUBMITTING REQUIRED BACKGROUND CLEARANCE FORMS

1. For new applications, the covered individual is required to complete and sign their portion of the CBS/MIS Consent and Release of Liability form. The licensee is required to complete and sign their portion of the CBS/MIS form.
2. For renewal applications:
 - A. The licensee or certificate holder fills out the CBS/MIS Renew and Disclosure forms and submits them to the Bureau with their Renewal Application.
 - B. Each individual listed on the Renewal form must also be listed on the Disclosure form. The Disclosure Statement is the form on which each covered individual gives consent for the Bureau to conduct their background screening each year. It is also the place where the covered individual must verify that during the past year (since their last background screening), they have not been convicted of a crime or had a supported finding of child abuse.

Always Level 2 Noncompliance. (This rule is cited for missing **renewal** CBS/MIS forms only. New licenses or certificate are not issued until the required background screenings have been completed.)

R430-6-3. Submission of Background Screening Information Not Associated with a New or Renewal Application.

- (3) Within five days of a new covered individual beginning work at a child care facility or moving into a licensed or certified home, the licensee or certificate holder must submit to the Department the name and other required identifying information for that individual.

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- (a) Unless an exception is granted under Subsection (4) below, the licensee or certificate holder shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.
- (b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

Rationale / Explanation

The purpose of this rule is to ensure that individuals who do not pass a background screening do not work with or have unsupervised access to children in child care programs regulated by the Bureau of Child Care Licensing, as outlined in Utah Code 26-39-107.

Enforcement

This rule is for providers who already have a license or certificate. It requires providers to submit required background clearance documents when they hire a new person, within 5 working days of the new person's first day of work. Licensed family and residential certificate providers are required to submit background clearance documents within 5 days of a new person age 12 or older moving into the home, and within 5 days of any child residing in the home turning 12.

A fingerprint card is required for any new covered individual who is 18 years of age or older, and who has not resided in Utah continuously for the past five years.

1. *The covered individual must obtain an acceptable set of fingerprints from local law enforcement or Public Safety and submit them to the Bureau, along with the fingerprint fee of \$31.00 per person.*
2. *After an initial FBI clearance, a covered individual does not need to complete another FBI clearance unless they have moved from Utah and established residency in another state and then returned to Utah.*

In order to be in compliance with this rule, the required background screening forms (including fingerprints, if required) must be submitted to the Bureau within 5 working days of the individual's first day of work. The Bureau will use the postmark date on the envelope to determine if the required documents were submitted within 5 working days.

Centers are required to keep a copy of the initial cleared CBS/MIS form in the file for staff hired as of 12/30/06.

Program Guests

*Providers sometimes bring in outside guest presenters to offer special programs to the children in care. For example, a provider may bring in someone to put on a puppet show or a play, or to offer dance lessons to children. In these cases, the person coming in to make the special presentation does **not** need a background clearance, **unless** the provider leaves the guest presenter alone with children, so that the guest presenter has unsupervised access to children in care. If the guest presenter does have unsupervised access to children in care, a background clearance is needed. In other words, if there is a caregiver present in the same room with the children and the guest presenter during the time the guest is in the facility, a background clearance is not needed.*

If an employee quits, even for just a month, and then comes back to work at the same facility, they are a new employee and need a new initial CBS/MIS Form within 5 days of returning to work at the facility.

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If a center owner owns more than one center and a staff member works in more than one of these centers, the staff member does not need to have initial and annual background clearances done at both centers. They may photocopy their background clearance documentation from one center and keep the photocopies in their file at the other center. The owner and governing board members of multiple centers may also clear at one center, and keep a copy of that clearance on file at the other centers with the same owner or governing board. The only exception to this would be if the program relocates to a new address, in which they must submit new background clearance documents with their new license application.

Level 1 Noncompliance: if the required initial CBS/MIS documents are missing, and a check with the Bureau Background Clearance Unit indicates the documents have not ever been submitted.

Level 2 Noncompliance: if the required CBS/MIS documents were not submitted within 5 working days as required, but a check with the Bureau Background Clearance Unit indicates the documents have been submitted at the time of the inspection or investigation.

R430-6-3. Submission of Background Screening Information, Fingerprints.

(4) Fingerprint cards are not required if:

- (a) the covered individual has resided in Utah continuously for the past five years;**
- (b) the covered individual is less than 23 years of age, and has resided in Utah continuously since the individual's 18th birthday; or**
- (c) the covered individual has previously submitted fingerprints under this section for a national criminal history record check and has resided in Utah continuously since that time.**

Rationale / Explanation

The purpose of this rule is to ensure that individuals who do not pass a background screening do not work with or have unsupervised access to children in child care programs regulated by the Bureau of Child Care Licensing, as outlined in Utah Code 26-39-107.

Enforcement

A fingerprint card is required for covered individuals who are 18 years of age or older, and who have not resided in Utah continuously for the past five years.

- 1. The covered individual must obtain an acceptable set of fingerprints from local law enforcement or Public Safety and submit them to the Bureau, along with the fingerprint fee of \$31.00 per person.*
- 2. After an initial FBI clearance, a covered individual does not need to complete another FBI clearance unless they have moved from Utah and lived in another state and then returned to Utah. This includes college students who leave the state for college and return to Utah.*

When fingerprints are required, they must be submitted, along with the CBS/MIS form, within 5 working days of the individual beginning work or moving into the home. If the fingerprints are mailed in, the Bureau will use the postmark date on the envelope to determine if the required documents were submitted within 5 working days.

Level 1 Noncompliance: if the required initial fingerprints are missing, and a check with the Bureau Background Clearance Unit indicates they have not been submitted.

Level 2 Noncompliance: if the required fingerprints were not submitted within 5 working days as required, but a check with the Bureau Background Clearance Unit indicates they have been submitted at the time of the

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inspection or investigation.

R430-6-4. Criminal Background Screening, Reporting New Arrests.

- (9) All licensees, certificate holders, and covered individuals must report to the Department any felony or misdemeanor arrest, charge, or conviction of a covered individual within 48 hours of becoming aware of the arrest warrant, arrest, charge, or conviction. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

Rationale / Explanation

The purpose of this rule is to ensure that individuals who do not pass a background screening do not work with or have unsupervised access to children in child care programs regulated by the Bureau of Child Care Licensing, as outlined in Utah Code 26-39-107.

Enforcement

This rule requires the licensee or certificate holder to report to the Department within 48 hours whenever a covered individual working, volunteering, or residing in the facility is arrested, charged with a crime, or convicted of a crime. This means the licensee or certificate holder must report to the Department within 48 hours of becoming aware of such an incident. The licensee or certificate holder is not out of compliance if they fail to report such an incident because they are unaware of the incident.

Always Level 1 Noncompliance.

R430-6-6. Child Abuse and Neglect Background Screening, Reporting New Supported Findings.

- (4) All licensees, certificate holders, and covered individuals must report to the Department any supported finding on the Department of Human Services Licensing Information System concerning a covered individual within 48 hours of becoming aware of the supported finding. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

Rationale / Explanation

The purpose of this rule is to ensure that individuals who do not pass a background screening do not work with or have unsupervised access to children in child care programs regulated by the Bureau of Child Care Licensing, as outlined in Utah Code 26-39-107.

Enforcement

This rule requires the licensee or certificate holder to report to the Department within 48 hours whenever a covered individual working, volunteering, or residing in the facility has a supported finding of child abuse or neglect with the Division of Child and Family Services, Department of Human Services. This means the licensee or certificate holder must report to the Department within 48 hours of becoming aware of such an incident. The licensee or certificate holder is not out of compliance if they fail to report such an incident because they are unaware of the incident.

Always Level 1 Noncompliance.